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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

In re:

PG&E CORPORATION

-and-

**PACIFIC GAS AND ELECTRIC
COMPANY,**

Debtors.

- ☐ Affects PG&E Corporation
- ☐ Affects Pacific Gas and Electric Company
- ☒ Affects both Debtors

** All papers shall be filed in the Lead Case,
No. 19-30088 (DM)*

Case No. 19-30088 (DM)

Chapter 11

(Lead Case)

(Jointly Administered)

**OFFICIAL COMMITTEE OF
UNSECURED CREDITORS'
MOTION FOR LEAVE TO FILE
SUR-REPLY**

[No Hearing Requested]

Pursuant to Northern District of California Local Bankruptcy Rule 9013-1(e) and Northern
District of California Local Civil Rule 7-11, the Official Committee of Unsecured Creditors

1 appointed in the above-captioned cases (the “Creditors’ Committee”)¹ respectfully submits this
2 motion for leave to file a sur-reply (the “Motion for Leave”) to address certain arguments
3 introduced in the *Plan Proponents’ Joint Memorandum of Law and Omnibus Response in Support*
4 *of Confirmation of Debtors’ and Shareholder Proponents’ Joint Chapter 11 Plan of*
5 *Reorganization* [Docket No. 7528] (the “Debtors’ Reply”). In support of its Motion for Leave, the
6 Creditors’ Committee respectfully states as follows:

7 The Debtors’ Reply raises, for the first time, the argument that contingent claims for
8 indemnification and contribution filed against the Debtors are subject to automatic disallowance
9 and discharge ***through the Plan*** pursuant to section 502(e)(1)(B) of the Bankruptcy Code. *See*
10 Debtors’ Reply [Docket No. 7528] at 52-53. This legal argument did not appear in the previous
11 version of the Plan filed on March 16, 2020 [Docket No. 6320] and, accordingly, was not addressed
12 by the Creditors’ Committee in its objection.² The Court should therefore grant the Creditors’
13 Committee leave to file a sur-reply that is narrowly tailored to the section 502(e) issue.

14 Courts in this District grant leave to file sur-replies in order to afford parties the opportunity
15 to respond to new arguments raised in a reply brief. *See, e.g., GT Nexus, Inc. v. Intrtra, Inc.*, No.
16 C 11-02145-SBA, 2014 WL 3373088, 2014 U.S. Dist. LEXIS 93469, at *2 (N.D. Cal. July 9,
17 2014) (granting motion for leave to file sur-reply to address new legal arguments and new evidence
18 raised in a reply brief); *Toomey v. Nextel Commc’ns, Inc.*, No. C-03-2887 MMC, 2004 WL
19 5512967, 2004 U.S. Dist. LEXIS 30793, at *2 (N.D. Cal. Sept. 23, 2004) (allowing the party to
20 file a sur-reply when the adverse party raised legal arguments for the first time and purportedly
21 misstated facts).

22 The proposed Sur-Reply, attached hereto as Exhibit A, is narrowly tailored and just eight
23 pages in length. The Sur-Reply is intended to assist the Court in evaluating the implications of—
24 and in the Creditors’ Committee’s view, the errors in—the Debtors’ purported deployment of
25 section 502(e)(1)(B). In its Sur-Reply, the Creditors’ Committee seeks to make three primary
26

27 ¹ Capitalized terms not defined herein shall have the meaning ascribed to them in the Creditors’ Committee’s
28 proposed sur-reply (the “Sur-Reply”) attached hereto as Exhibit A.

² *Limited Objection of the Official Committee of Unsecured Creditors to Plan Confirmation* [Docket No. 7300].

1 points: (i) the Debtors are incorrect when they assert that they may use assumption in section 365
2 as a vehicle to automatically invalidate contingent indemnification and contribution claims within
3 Vendors' contracts purportedly through a blanket application of section 502(e)(1)(B)—while at
4 the same time preserving identical claims in more favored contracts with the Debtors' directors,
5 officers, and other employees; (ii) the legislative concerns that section 502(e)(1)(B) was intended
6 to address are not implicated here; and (iii) the Debtors improperly disregard section 502(e)(2),
7 which mandates that contingent claims subject to disallowance under section 502(e)(1)(B) shall
8 be determined and allowed, and treated as prepetition claims, once they become fixed.

9 In light of the Debtors' newly-raised arguments on reply, the Court should permit the
10 Creditors' Committee to submit the limited Sur-Reply. *See Zamani v. Carnes*, 491 F.3d 990, 997
11 (9th Cir. 2007) (concluding the district court's choice to not consider arguments raised for the first
12 time in a reply brief was not clear error).

13 For the foregoing reasons, the Creditors' Committee respectfully requests that the Court
14 grant it leave to file the Sur-Reply.

15
16 DATED: June 1, 2020

Respectfully submitted,

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18 **MILBANK LLP**

/s/ Gregory A. Bray

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21
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